

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:18-cv-142-FDW**

EARL JAMES WATSON,)	
)	
Plaintiff,)	
)	
vs.)	<u>ORDER</u>
)	
PAULA SMITH, et al.,)	
)	
Defendants.)	
)	

THIS MATTER is before the Court on Plaintiff's Motion for Extension of Time for Service of Process, (Doc. No. 26), and NCDPS's Motion to Deem Waiver of Service of Summons Timely Filed as to Defendant Kevin Chung, (Doc. No. 27).

The Complaint passed initial review against Defendants Bowden, Brathwaite, Brewton, Chung, Clelland, Ford, Foreman, Glick, Kalinski, McFarland, Mundle, Parsons, Polanco, Quinn, Randle, Rinaldo, Nurse Jane Doe 2 on claims including failure to intervene, deliberate indifference, supervisory liability, and pendent claims under North Carolina law. (Doc. No. 8). To date, Defendants Bowden, Brathwaite, Brewton, Clelland, Foreman, Glick, Randle, and Rinaldo have been served. (Doc. Nos. 15, 18). NCDPS has now filed a service waiver for Defendant Chung, (Doc. No. 27). The Motion to accept the waiver as timely filed will be granted.

The Clerk of Court issued a summons form for Defendant McFarland but the U.S. Marshal returned it as unexecuted, stating "Processed was returned on 01/08/2019 – unable to find – return to sender." (Doc. No. 17 at 1).

NCDPS was unable to provide a last known address for **Defendant Polanco** and has been unable to identify **FNU Ford**, but states that it will notify the Court if further research enables it

to identify, locate, and procure service waivers for these Defendants. See (Doc. No. 16). NCDPS is ordered to file a Notice with the Court within **ten (10) days** of this Order informing the Court whether it has been able to identify, locate, and obtain service waivers or last known addresses for these Defendants.

On January 30, 2019, the Court ordered the U.S. Marshal to use all reasonable efforts to locate and obtain service on Defendants Kalinski, McFarland, Mundle, Parsons, and Quinn, and ordered Plaintiff to provide any and all information about Nurse Jane Doe 2 to assist the Marshal in identifying and effectuating service on that individual. (Doc. No. 21). Summons forms were electronically issued for service on Defendants Kalinski, McFarland, Mundle, Parsons, and Quinn on January 30, 2019. (Doc. No. 22). They have not yet been returned. Plaintiff's Notice providing identifying information for Nurse Jane Doe 2 is due by February 11, 2019. (Doc. No. 21).

Plaintiff now seeks an extension of time to serve Defendant McFarland and any other Defendants who have not yet been served. He claims that he was unaware of any problems serving McFarland or any other Defendant until he received a process receipt for McFarland from the U.S. Marshal on January 30, 2019. Plaintiff has provided a new address for Defendant McFarland where he believes service can be effectuated, but he has not provided an updated summons form for Defendant McFarland. (Doc. No. 26 at 2). Plaintiff's Motion will be granted. See Fed. R. Civ. P. 4(m) (providing for extension of the service period for good cause).

Plaintiff is instructed to complete and return, within **ten (10) days** of this Order, a summons form for Defendant McFarland and any other unserved Defendants (Ford, Kalinski, Mundle, Parsons, Polanco, Quinn, Jane Doe 2) for whom he has an address for service. Plaintiff is cautioned that failure to comply with this Order may result in dismissal of any unserved Defendants from this case.

IT IS THEREFORE ORDERED that:

- (1) Plaintiff's Motion for Extension of Time for Service of Process, (Doc. No. 26), is **GRANTED** as set forth in this Order.
- (2) NCDPS's Motion to Deem Waiver Timely Filed for Defendant Chung, (Doc. No. 27), is **GRANTED**.
- (3) NCDPS shall file a Notice within **ten (10) days** of this Order informing the Court whether it has been able to identify, locate, and obtain service waivers or last known addresses for **Defendants Ford and Polanco**.
- (4) Plaintiff shall file updated summons forms for **Defendants Ford, Kalinski, McFarland, Mundle, Parsons, Polanco, Quinn, and Jane Doe 2** within **ten (10) days** of this Order.
- (5) Plaintiff is cautioned that failure to comply with this Order may result in dismissal of any unserved Defendants.
- (6) The Clerk of Court is instructed to mail Plaintiff a copy of this Order and eight blank summons forms.

Signed: February 5, 2019



Frank D. Whitney
Chief United States District Judge

